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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,297	04/27/2006	Uwe Schnitzler	E7900.2009/P2009	5152

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DICKSTEIN SHAPIRO LLP  
1825 EYE STREET NW  
Washington, DC 20006-5403

EXAMINER
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HUPCZEY, JR, RONALD JAMES

ART UNIT	PAPER NUMBER
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3739

MAIL DATE	DELIVERY MODE
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12/30/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<b>Application No.</b> 10/577,297	<b>Applicant(s)</b> SCHNITZLER ET AL.	
	<b>Examiner</b> RONALD HUPCZEY, JR	<b>Art Unit</b> 3739	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 22 December 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: \_\_\_\_\_.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

/Ronald J. Hupczey/  
Examiner, Art Unit 3739

/Michael Peffley/  
Primary Examiner, Art Unit 3739

Continuation of 11. does NOT place the application in condition for allowance because: Applicant has summarized the subject matter of instant independent claims 1, 9 and 20 on pages 6-7 of the Remarks. Applicant argues on pages 7-8 of the Remarks that Ishikawa fails to disclose a "guiding device" as in each of claims 1, 9 and 20 because the insulating part 12 of Ishikawa is a "positioning aid" which is not capable of substantially diverting plasma flow. The Examiner respectfully disagrees with Applicant's characterization of the subject matter of Ishikawa. The Examiner has indeed relied upon the insulating part 12 of Ishikawa located at the end of knife 11 as the claimed guiding device. The insulating part 12, as shown in at least figures 3 and 7, is larger in diameter than the knife 11 to which it is mounted (see paragraph [0023] of the machine translation describing the relationship of the diameters of parts 11 and 12 of Ishikawa). Through-hole 47 provides a supply of plasma over the knife 11 towards the insulating part 12 with the insulating part 12 being within the flow path of at least a portion of the plasma exiting the through-hole 47 due to the relationship between the relative diameters of the through-hole 47, knife 11 and insulating part 12. While Applicant argues on page 8 of the Remarks that "the insulating part 12 cannot divert the plasma flow significantly", nowhere in claims 1, 9 or 20 is it required that a substantial amount of plasma be diverted. Claim 1 states "at least a part of said plasma is diverted in a predetermined direction". Claim 9 states "configured for guiding a plasma stream flowing through the gas-delivering device". Claim 20 states "configured for guiding an inert gas stream through the tube". In light of these recitations, it remains the Examiner's position that the insulating part 12 of Ishikawa is capable of guiding at least a portion of the plasma stream flowing from the through-hole 47 over the knife 11 towards the insulating part 12 into a space substantially radial to the outlet. The Examiner has carefully review Applicant's specification to ascertain to what extent "substantially radial" to the outlet requires but the Examiner has failed to find any quantification with gives rise to a measurement or degree to which the plasma would need to extend radially from the outlet. In this case, it remains the Examiner's position that as in at least figure 7, the plasma from through-hole 47 is diverted "substantially radial" to the through-hole-47 and that such diversion is provided at least in-part by the insulating part 12 being within the flow path of the plasma exiting through-hole 47. Additionally, the Examiner is unable to see how, as stated by Applicant, "The plasma flow of the instrument disclosed in Ishikawa will always stream in a direction parallel to the knife 11 until it hits an obstacle" since there is clearly, given the disclosure in paragraph [0023], a disruption in the flow path along the knife 11 in the form of the insulating part 12 due to its larger diameter than the outer diameter of the knife 11. It appears to the Examiner that at least some portion of the plasma flow parallel to the knife 11 would be diverted by the insulating part 12 into a space substantially radial to the through-hole 47 and that such diversion would not be solely dependent upon the presence of tissue to cause such a diversion.

It is noted with respect to Applicant's comment that "the guiding device 20 of the disclosed embodiments, on the other hand, has a diameter which is at least the size of the opening such that the plasma is immediately diverted upon exiting the opening" is not found persuasive since such limitations are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to Applicant's arguments regarding the rejection over Comescu in view of Ishikawa and the rejection over Ishikawa in view of LaFontaine, the Examiner believes that the above addressing of how the insulating part 12 of Ishikawa is indeed functioning as the claimed guiding device is fully responsive to those arguments.

Therefore, it is at least for the reasoning presented above that the Examiner believes Applicant's arguments are not persuasive and the rejections presented in the final rejection remain tenable.